



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT-I**

CP (IB) No. 205 (MB) 2024

*An application under section 9 of the Insolvency and Bankruptcy Code, 2016;
and*

In the matter of;

Mr. Sagar Vinod Vora

...Operational Creditor/Applicant

Versus

Marvel Sigma Homes Private Limited

...Corporate Debtor/Respondent

Order Pronounced on 22.07.2026

Coram:

Sh. Prabhat Kumar

Hon'ble Member (Technical)

Sh. Sushil Mahadeorao Kochey

Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Adv. Akshay Petkar i/b

Pranav Shah

For the Corporate Debtor :

Adv. Amir Arsiwala a/w

Adv. Vaishnavi

ORDER

Brief facts of the case

1. The present Company Petition (IB) No. 205 (MB) of 2024, was filed on 10.11.2023 under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') on 10.11.2023 by Mr. Sagar Vinod Vora, (hereinafter referred to as the



‘Operational Creditor /Petitioner’) seeking to initiate Corporate Insolvency Resolution Process (‘CIRP’) against Marvel Sigma Homes Private Limited ("hereinafter referred to as the Corporate Debtor/Respondent").

2. The Applicant is a sole proprietor of Sagar Constructions having the address of the office as Office No 302, Legacy Apartment, Above Lifeline Hospital, D. P. Road, Aundh, Pune - 411007.
3. The Corporate Debtor is a company incorporated under the Companies Act, 1956 on 18.06.2010 having CIN: U45200PN2010PTC136619 with its registered office at 301-302, Jewel Tower, Lane No. 5, Koregaon Park, Pime-400001. It is a real estate company that develops residential projects. Its authorized share capital is Rs. 1,04,00,000/- (Rupees One Crore Four Lakh Only) and the paid up capital is Rs. 3,96,750/-(Rupees Three Lakh Ninety-Six Thousand Seven Hundred Fifty Only).

Submissions of the Applicant

4. The Petitioner submitted that he had supplied various goods and rendered services to the Corporate Debtor as well as its four sister concerns in the ordinary course of business. The Petitioner asserts that the Corporate Debtor owes an operational debt of Rs. 12,13,99,398/- (Rupees Twelve Crore Thirteen Lakh Ninety-Nine Thousand Three Hundred Ninety-Eight) by the Respondent Company inclusive of the interest at the rate of 18% per annum on this principal amount.
5. As stated in Part IV of the Application, the Operational Creditor has claimed an operational debt aggregating to Rs. 12,13,99,398/- (Rupees Twelve Crore Thirteen Lakh Ninety-Nine Thousand Three Hundred Ninety-Eight Only), comprising a principal amount of Rs. 7,93,77,515/- and interest amounting to Rs. 4,20,21,883/-, calculated as on 15.10.2023. It is the case of the Operational Creditor that the payment under each invoice became due upon the expiry of 30 days from the date of its issuance, whereupon the corresponding default occurred.



6. The Petitioner submitted that, prior to the institution of the present proceedings, he had filed Company Petition (IB) No. 2881 of 2019 under Section 9 of the IBC against the Corporate Debtor, which was listed before this Tribunal on 23.08.2021. During the pendency of the said proceedings, the parties entered into a Settlement Agreement dated 19.08.2021. In terms thereof, the Corporate Debtor agreed to settle the outstanding dues on a one-time basis for a sum of Rs. 3,90,00,000/- by allotting two residential apartments in its project. Pursuant to the said settlement dated 19.8.2021, the Petitioner withdrew Company Petition (IB) No. 2881 of 2019 vide order dated 23.08.2021, recording that *“Both parties filed withdrawal memo withdrawing the main Company Petition on account of the settlement entered into between the parties. Withdrawal memo is taken on record.”*
7. The Petitioner further submitted that, in furtherance of the aforesaid settlement, the Corporate Debtor issued two allotment letters and executed Flat Agreements dated 19.8.2021 in respect of the said apartments in the Marvel Piazza Project, Pune, through its Director. The Petitioner further submitted that the Corporate Debtor also executed a Special Power of Attorney authorising admission of execution of the said conveyance documents. It was further submitted that, despite the aforesaid settlement and execution of the requisite documents, the Corporate Debtor failed to discharge its outstanding liability. Consequently, after repeated requests and reminders failed to evoke any response, the Operational Creditor issued a demand notice under Section 8 of the IBC, which was received by the Corporate Debtor on 26.10.2023. As the outstanding operational debt remained unpaid, the present Company Petition came to be filed.

Submissions of the Respondent:

8. The Respondent submitted that the present Petition is not maintainable as the Petitioner is neither an "Operational Creditor" within the meaning of Section 5(20) of the Insolvency and Bankruptcy Code, 2016 nor is the amount claimed an "Operational Debt" as defined under Section 5(21) thereof.



9. The Respondent submitted that it does not dispute that certain goods were supplied and services were rendered by the Petitioner to the Corporate Debtor and its four sister concerns. However, it was contended that the parties subsequently entered into negotiations culminating in the execution of a Settlement Agreement. According to the Respondent, any claim arising out of the said Settlement Agreement cannot be construed as an operational debt within the meaning of Section 5(21) of the IBC.
10. The Respondent further submitted that the Settlement Agreement does not contain any provision for revival of the Petitioner's original claim as an Operational Creditor in the event of breach of the settlement. It was contended that the Settlement Agreement conclusively settled all outstanding liabilities of the Corporate Debtor as well as its sister concerns towards the Petitioner. According to the Respondent, the outstanding dues stood fully settled by allotment of two residential apartments in terms of the Settlement Agreement, thereby resulting in novation of the original contractual relationship. It was argued that the relationship between the parties, which may initially have been that of a supplier of goods and services and a customer, stood transformed into that of a developer and an allottee of residential units. The Respondent submitted that, in the absence of any clause providing for revival of the original debt upon breach of the Settlement Agreement, the Petitioner's remedy, if any, is confined to enforcement of the rights arising under the Settlement Agreement and not to revival of the original monetary claim. Consequently, it was contended that no "default", as contemplated under the IBC, has occurred.
11. The Respondent further submitted that, at the time of withdrawal of Company Petition (IB) No. 2881 of 2019, although this Tribunal recorded the fact that the parties had entered into a Settlement Agreement, the Petitioner neither sought nor was granted liberty to institute a fresh petition in the event of any subsequent breach.
12. The Respondent further submitted that the Petitioner has himself admitted that the goods and services were supplied not only to the Corporate Debtor but also to its four sister concerns. It was, therefore, contended that the present Petition



impermissibly includes claims pertaining to supplies made to other entities, which cannot be recovered from the Corporate Debtor in the present proceedings.

13. The Respondent submitted that it had duly complied with all its obligations under the Settlement Agreement. According to the Respondent, it was the Petitioner who repeatedly enlarged his claims beyond the terms of the settlement. It was further submitted that the Corporate Debtor had executed a Special Power of Attorney authorising the Petitioner to complete registration of the Flat Agreements without requiring the presence of the officers of the Corporate Debtor. However, when called upon to complete the registration process, the Petitioner raised additional demands and insisted upon payment of amounts over and above those agreed under the Settlement Agreement.
14. The Respondent further submitted that the Settlement Agreement constituted a "barter arrangement", whereby the liability arising out of supply of goods and services was agreed to be discharged through allotment of residential units instead of payment in money. In support of the said contention, reliance was placed upon the judgment of the Hon'ble National Company Law Appellate Tribunal in *M/s D.B. Corp Limited v. M/s AG8 Ventures Limited*, Company Appeal (AT) (Insolvency) Nos. 1172–1173 of 2022, to contend that a liability to allot a real estate unit under such a barter arrangement does not constitute an operational debt under the IBC.
15. The Respondent further submitted that the Petitioner has failed to explain the basis on which the outstanding principal amount has been quantified at Rs. 7,93,77,515/-. It was contended that the Petitioner has also failed to establish any contractual or statutory entitlement to claim interest. According to the Respondent, at the time the goods were supplied and services rendered, there was no agreement between the parties regarding the applicable rates or charges. It was argued that the invoices were raised unilaterally by the Petitioner and were consistently disputed by the Respondent. The Respondent further contended that interest can form part of an operational debt only where there exists an agreement between the parties providing for payment of such interest.



In the absence of any such agreement, the claim for interest cannot constitute part of the operational debt for the purposes of Section 9 of the IBC.

16. Lastly, the Respondent submitted that the invoices relied upon by the Petitioner pertain to the period commencing from the year 2016 and that the present Petition is, therefore, barred by limitation. It was further contended that the Memorandum of Settlement cannot be treated as an acknowledgment of liability for the purposes of extending the period of limitation, as it merely novated the original contractual arrangement by substituting the monetary claim with allotment of two residential units. The Respondent also submitted that the doctrine of a running account has no application to proceedings initiated under Section 9 of the IBC.

Analysis and Findings:

17. Heard the councils for both the parties and perused material on record
18. The present Company Petition was instituted on 10.11.2023. During the pendency of the proceedings, the parties arrived at an amicable settlement and executed Consent Terms dated 10.12.2024. Accordingly, this Tribunal, vide order dated 11.12.2024, disposed of the Petition in terms of the said Consent Terms. The operative portion of the order reads as under:

"2. Ld. Counsel for the parties informs that the parties have entered into Consent Terms and places on record a signed copy thereof duly authenticated by the learned Counsel for the parties. The same is taken on record and C.P. (IB) No. 205 (MB) of 2024 is disposed of in terms of the Consent Terms.

3. The Petitioner shall be at liberty to have the Petition restored in case the Consent Terms are breached by the Corporate Debtor."

19. Subsequently, upon alleging breach of the Consent Terms by the Corporate Debtor, the Petitioner preferred Restoration Application No. RST.A (IBC) No. 24 (MB) of 2026. The said application came to be allowed, and the present



Company Petition was restored to file vide order dated 07.05.2026. The relevant part of the said order is reproduced hereunder:

“2. Ld. Counsel for the Respondent informs that they are still in talks with the Applicant Creditor for settling their dues and seeks some time. It is noted that the present Application seeks restoration of the Company Petition, and the matter thereafter has to be heard on merits. Accordingly, the Corporate Debtor shall have sufficient time to reach out an agreement in the meanwhile, if they wish to have. We consider it appropriate to restore the Company Petition for consideration thereof on merits. The Court Officer is directed to list C.P. (IB)/205(MB)2024 on 10.06.2026.”

20. The Petitioner submitted that, in furtherance of the Consent Terms and with a view to facilitating registration of the Agreements for Sale, Mr. Vishwajeet Subhash Jhavar, Director of the Corporate Debtor, executed a Special Power of Attorney before the Joint Sub-Registrar, Haveli, Pune, bearing Registration No. 8/8900/2025, authorising the Operational Creditor to execute and register the Agreements for Sale in respect of Flat Nos. J-1702 and J-1902. It was further submitted that the Operational Creditor repeatedly called upon the Corporate Debtor to perform its obligations under the Consent Terms; however, the Corporate Debtor failed to execute the registered Agreements for Sale and hand over physical possession of the said flats within the stipulated period, despite receipt of a legal notice dated 27.11.2025. The Petitioner further submitted that the security cheque bearing No. 172468 dated 30.11.2025 for a sum of Rs. 3,90,00,000/-, issued by the Corporate Debtor, was presented for encashment but was dishonoured. On the aforesaid basis, it was contended that the Corporate Debtor had committed a wilful breach of the Consent Terms. On the other hand, the Corporate Debtor submitted that it had acted bona fide and had taken all necessary steps for implementation of the settlement. It was contended that the Petitioner had accepted substantial benefits flowing from the settlement but failed to perform the reciprocal obligations cast upon him under the Consent Terms. According to the Corporate Debtor, the non-fulfilment of the remaining



obligations under the Settlement Agreement was attributable to the Petitioner's own conduct and not to any default on the part of the Corporate Debtor.

21. We have perused the Consent Terms dated 10.12.2024. The relevant clauses thereof are extracted below:

“3. Both the Parties pursuant to negotiations and discussions have arrived at an amicable settlement with respect to the unpaid outstanding Operational Debt.

4. Operational Creditor and Corporate Debtor have decided to enter into these Consent Terms to settle the unpaid outstanding Operational Debt against certain Work Orders and Invoices mentioned in the captioned Company Petition for a full and final amount of Rs. 3,90,00,000/ (Rupees Three Crore Ninety Lakh Only) (Settlement Amount).

5. The Corporate Debtor has agreed to allocate and hand over the possession of the 2 Flats as identified in these Consent Terms to the Operational Creditor in its Project called MARVEL ISOLA Phase-2 bearing RERA Registration No. P52100001843 situated at NIBM Annex, Corinthians Club internal Road, Off Hadapsar, Opp Mohammadwadi, Pune. The allocation and handing over of the said flats in the Corporate Debtor's project called MARVEL ISOLA shall amount to the satisfaction of the Settlement Amount. Each of the two flats is valued at Rs. 2,25,00,000/- each inclusive of registration charges, floor rise, one covered car parking, infrastructure changes and MSEB Charges, bringing the total value of the flats being offered for settlement to Rs. 4,50,00,000/-. The Operational Creditor shall pay to the Corporate Debtor the deficit amount of Rs. 60,00,000/- on or before registration of the agreement for sale in terms of these Consent Terms.

.....

9. The Corporate Debtor undertakes to handover the physical possession of the said flats on or before 30.09.2025 by executing



necessary registered agreements for transferring the said flats in favour of Operational Creditor. The Corporate Debtor shall make every endeavor to hand over the physical possession of the completed flats by 01.06.2025, subject to receipt of all approvals from the municipal authorities.

10. The present consent terms shall only be satisfied upon the handing over of the physical possession of the said flats to the Operational Creditor along with execution of necessary registered agreements in favour of the Operational Creditor on or before 30.09.2025 and the failure to do the same shall constitute breach and default of these Consent Terms.

11. In case there is a delay in the handover of the said flats to the Operational Creditor along with the execution of necessary registered agreements in favour of the Operational Creditor on or before 30.09.2024, the Corporate Debtor agrees to pay an interest at the rate of 18% per annum on the settlement amount of Rs. 3,90,00,000/- (Rupees Three Crore Ninety Lakh Only) till satisfaction of these Consent Terms. In any event, such delay shall not be more than 2 months i.e 30.11.2025.

...

13. In case of any breach or default in complying with these Consent Terms on the part of the Corporate Debtor, the Operational Creditor shall have the liberty to initiate appropriate proceedings including but not limited to the revival of the Company Petition No. 205 of 2024 or to file a fresh Company Petition under the Insolvency and Bankruptcy Code, 2016.”

22. It is an admitted position that, pursuant to the Consent Terms, a Special Power of Attorney was executed in favour of the Petitioner and the Agreements for Sale were also executed. However, for reasons attributed by each party to the other, the remaining obligations contemplated under the Consent Terms, namely execution and registration of the sale deeds and handing over of physical



possession of the subject flats, were not completed. The Consent Terms unequivocally stipulated that all obligations thereunder were to be fulfilled on or before 30.11.2025, failing which the same would constitute a breach thereof and the Petitioner would be at liberty to seek restoration of the Company Petition or to institute fresh proceedings. Since it is not in dispute that the obligations envisaged under the Consent Terms remained unfulfilled, this Tribunal, vide order dated 07.05.2026, restored the present Company Petition.

23. However, the question before this Tribunal is not whether there was a breach of the Consent Terms. The restoration order merely revived the present Company Petition for adjudication. The maintainability of the Petition and the entitlement of the Petitioner to invoke the provisions of Section 9 of the IBC are required to be examined independently on their own merits.
24. It is also not in dispute that the Petitioner had supplied goods and rendered services to the Corporate Debtor as well as its four sister concerns, against which invoices were raised from time to time. As per the ledger account produced by the Operational Creditor, the last entry pertaining to Marvel Kyra is dated 08.04.2019. The Operational Creditor has also placed on record Form 26AS, wherein the last transaction reflecting the name of Marvel Sigma Homes Private Limited is dated 11.03.2016. In addition thereto, the Operational Creditor raised invoices towards idle charges for 'MS shuttering material' lying at the project site of the Corporate Debtor, the last such invoice being dated 08.04.2023.
25. It is further noticed that the Corporate Debtor, by its communication dated 02.03.2017, acknowledged its outstanding liability in the following terms:
- "We hereby confirm that the current outstanding payment due from us for January 2017 is Rs. 4,26,62,505/- (Rupees Four Crore Twenty-Six Lakh Sixty-Two Thousand Five Hundred and Five Only). We are ready to pay the outstanding amount to you."*
26. Thereafter, the Parties entered into a settlement agreement dated 19.8.2021 and the said settlement agreement entered between the Petitioner and Marvel Group Companies namely Marvel Group companies i.e. M/s Marvel Sigma Homes



Private Limited, M/s Marvel Landmarks Private Limited, M/s Marvel Realtors and Developers Limited, M/s Marvel Zeta Developers Pvt Ltd., and M/s Kappa Infra Ventures Private Limited represented by Mr. Vishwajeet Jhavar, records as follows:

“In pursuance of the said, Marvel Group shall allot 2 (two) apartments in Marvel Piazza Project situated at Viman Nagar, Pune (L103 and L203) and M/s. Sagar Constructions represented by Sagar Vinod Vora proprietor of M/s Sagar Constructions, has hereby agreed to adjust the consideration payable against all the dues of Rs. 3,90,00,000 (Rupees Three Crore and Ninety Lakh Only) against the claim in the company petitions i.e. (1) C.P.(IB)-2881(MB)-2019 Sagar Vinod Vora proprietor of Sagar Constructions Marvel Sigma Homes Pvt. Ltd. (2) C.P.(IB) 2874 (MB) 2019 Sagar Vinod Vora proprietor of Sagar Constructions Kappa Infra Ventures Private Limited. (3) C.P. (IB) - 2876(MB) - 2019 Sagar Vinod Vora proprietor of Sagar Constructions Marvel Zeta Developers Private Limited, (4) matrix C.P. (IB) - 2877(MB) - 2019 matrix Sagar Vinod Vora proprietor of Sagar Constructions Marvel Landmarks Private Limited. (5) C.P. (IB) - 2880(MB) - 2019 Sagar Vinod Vora proprietor of Sagar Constructions Marvel Realtors and Developers Limited and pay the balance amount to Marvel Group. Post the above referred transaction M/s. Sagar Constructions hereby assures, state and undertake to not to make any claim against any of Marvel Companies or its employees for any outstanding and shall forthwith agree to withdraw all the petitions as referred above.”

27. Pursuant to aforesaid settlement agreement dated 19.8.2021, the Petitioner filed a withdrawal memo before this Tribunal and earlier CP (IB) 2881 of 2019 was withdrawn and disposed of by this Tribunal. It is evident from the aforesaid Settlement Agreement as well as Order dated 23.08.2021, recording that *“Both parties filed withdrawal memo withdrawing the main Company Petition on*



account of the settlement entered into between the parties. Withdrawal memo is taken on record.”.

28. It is further noticed that the withdrawal memo filed before this Tribunal specifically recorded that the disputes between the parties stood fully settled. The relevant portion thereof reads as under:

"Accordingly, the Corporate Debtor–Respondent and the Operational Creditor–Petitioner have executed a Settlement Agreement dated 19.08.2021, whereby it is resolved that the present Company Petition, along with the other claims of the Operational Creditor against the Corporate Debtor, stands fully settled in terms of the Settlement Agreement.".

29. It is pertinent to note that, while withdrawing Company Petition (IB) No. 2881 (MB) of 2019, the parties neither sought nor obtained liberty from this Tribunal to institute a fresh petition in the event of any alleged default or breach of the Settlement Agreement. No such liberty was either prayed for or granted by this Tribunal in its order dated 23.08.2021.

30. Order XXIII Rule 1 sub rule (4) of the CPC states that

“Where the plaintiff— (a) abandons any suit or part of claim under sub-rule (1), or (b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.” Further, Order XXIII Rule 1(3) provides as “.... It may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.”

31. Thus, Order XXIII Rule 1(4) of the Code of Civil Procedure, 1908 mandates that where a suit or proceeding is withdrawn without obtaining the permission contemplated under Rule 1(3), a fresh proceeding in respect of the same subject



matter and founded on the same cause of action is not maintainable. In the present case, it is an admitted position that, while withdrawing Company Petition (IB) No. 2881 (MB) of 2019, the Petitioner neither sought nor obtained liberty from this Tribunal to institute a fresh petition. It is equally undisputed that the present Company Petition is founded upon the very same operational debt and arises out of the same cause of action which formed the subject matter of Company Petition (IB) No. 2881 (MB) of 2019.

32. The consequence of withdrawing a suit without obtaining liberty as stipulated under Order XXIII Rule 1(3) of the Code is that the plaintiff is precluded, by virtue of Rule 1(4), from instituting a fresh suit in respect of the same subject matter. The rationale underlying this statutory embargo is to ensure finality in litigation, prevent multiplicity of proceedings, and protect the defendant from being vexed repeatedly on the same cause of action. The requirement of obtaining leave of the Court is, therefore, not an empty formality but a substantive safeguard against abuse of the judicial process, permitting a fresh action only in cases where the statutory conditions under Order XXIII Rule 1(3) are satisfied.
33. It is relevant to refer to decision in case of ***Florex Tiles...Versus...Greenstone Granite Pvt. Ltd.*** 2024 SCC OnLine NCLAT 972 wherein it is held that “11. The principles underlying Order 23 Rule 1 are also principles relevant for Adjudicating Authority to pass order while permitting withdrawal of an Application or granting leave to institute a fresh suit. When we look into order 23 Rule 1, sub-rule (3), it is clear that it may allow the plaintiff to institute fresh suit. Sub-rule (3) begins with word “Where the Court is satisfied,-”. The principles under Order 23 Rule 1, cannot be read to mean that when withdrawal is allowed to a suit, the permission to allowing the plaintiff to institute a fresh suit is automatic or mandatory.....”
34. Further, in case of ***HPCL Bio-Fuels Ltd...Versus...Shahaji Bhanudas Bhad*** 2024 SCC OnLine SC 3190, it is held that “39. Order 23 Rule 1, as it now stands post the amendment, makes a distinction between “abandonment” of a suit and “withdrawal” from a suit with permission to file a fresh suit and



provides for – first, abandonment of suit or a part of claim; and secondly, withdrawal from suit or part of claim with the leave of the court. Abandonment of suit or a part of claim against all or any of the defendants is an absolute and unqualified right of a plaintiff and the court has no power to preclude the plaintiff from abandoning the suit or direct him to proceed with it. Sub-rule (1) of Order 23 Rule 1 embodies this principle. However, if the plaintiff abandons the suit or part of claim, then he is precluded from instituting a fresh suit in respect of such subject-matter or such part of claim.....”. It was further held that “40. However, if the plaintiff desires to withdraw from a suit or part of a claim with liberty to file a fresh suit on the same subject matter or part of the claim, then he must obtain the permission of the court under sub-rule (3) of Order 23 Rule 1. The failure to obtain such permission would preclude the plaintiff from instituting any fresh suit in respect of such subject-matter or such part of the claim, and also to any costs that may be imposed by the court”.

35. This decision in the case of HPCL Bio-fuels Limited (Supra) having been rendered in 2024 sets out the law in relation to interpretation of Order 23 Rule (1) & (3). The decision of Hon’ble NCLAT in Florex Tiles (Supra), in the context of IBC, has also said similarly that “*The principles under Order 23 Rule 1, cannot be read to mean that when withdrawal is allowed to a suit, the permission to allowing the plaintiff to institute a fresh suit is automatic or mandatory*”.
36. Further, it is also relevant to refer to the decision in case of **Ramesh Chandra Sankla Etc Vs. Vikram Cement Etc AIR 2009 SC 713** wherein, after taking note of decision in case of Sarva Shramik Sangathan (KV), Mumbai v. State of Maharashtra & Ors., (2008) 1 SCC 494 holding that “*provisions [of the Code of Civil Procedure](#) do not strictly apply to industrial adjudication. The second application was, therefore, held maintainable*”, the Hon’ble Supreme Court stated that “*In such cases, obviously, public policy requires that he should not start fresh round of litigation and the Court will not allow him to re-agitate the claim which he himself had given up earlier*”.



37. As is noted that the present petition was filed by the Petitioner subsequent to breach of the Settlement Agreement, whereby the debt claimed in the present petition came to be settled earlier, and the earlier Petition CP (IB) 2881 of 2019 was withdrawn without any liberty having been sought for restoration or having been granted by this tribunal. Further, the present petition was also disposed of by this Tribunal in view of subsequent consent terms dated 10.12.2024 grating a liberty to restore the same in case of breach of said consent terms, however, this issue of Res-judicata was neither argued nor considered while allowing the withdrawal of present company petition in view of subsequent consent terms. The present petition was restored by this Tribunal in view of alleged breach of said consent terms observing that the application for restoration of the Company Petition seeks restoration in view of breach of consent terms, and *the matter hereafter has to be heard on merits*. Accordingly, the bar on institution of present petition in view of Order XXIII Rule 1, was not considered at any point of time prior to dismissal of present petition on ground of subsequent consent terms.
38. Apart from the above, the Settlement Agreement dated 19.08.2021 executed by the parties in Company Petition (IB) No. 2881 (MB) of 2019 unequivocally records that, upon allotment of two residential apartments in the Marvel Piazza Project situated at Viman Nagar, Pune (L-103 and L-203), the Petitioner agreed to adjust the consideration towards all outstanding dues quantified at Rs. 3,90,00,000/- (Rupees Three Crore Ninety Lakh Only), withdraw all the pending Company Petitions and not raise any further claim against any of the Marvel Group companies or their employees. The relevant covenant reads as under:

"Post the above referred transaction, M/s. Sagar Constructions hereby assures, states and undertakes not to make any claim against any of the Marvel Companies or its employees for any outstanding and shall forthwith agree to withdraw all the petitions as referred above."



39. In our considered view, upon execution of the Settlement Agreement and the subsequent withdrawal of Company Petition (IB) No. 2881 (MB) of 2019 in terms thereof, the original operational claim stood settled, compromised and substituted by a fresh contractual arrangement voluntarily entered into between the parties. Consequently, the rights and obligations of the parties thereafter flowed exclusively from the Settlement Agreement and, subsequently, the Consent Terms, and not from the original operational transactions forming the basis of the Company Petition. Any dispute arising thereafter could only relate to the implementation, performance or enforcement of the settlement arrangement and not to the original operational debt. In the absence of any clause expressly providing for revival of the original operational debt upon breach of the settlement, any surviving claim is purely contractual in nature and, therefore, falls outside the ambit of an "operational debt" as defined under Section 5(21) of the Insolvency and Bankruptcy Code, 2016.
40. In view of the foregoing discussion, this Tribunal is of the considered opinion that the present Company Petition, being C.P. (IB) No. 205 (MB) of 2024, is not maintainable.
41. It is, however, clarified that this order shall not preclude or otherwise impair the Petitioner's right to avail of such other remedies as may be available to him in law, in respect of the alleged breach of the Settlement Agreement or the Consent Terms.

ORDER

42. Accordingly, **Company Petition (IB) No. 205 (MB) of 2024**, filed by Mr. Sagar Vinod Vora, the Operational Creditor, under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with the relevant provisions of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking



initiation of the Corporate Insolvency Resolution Process (CIRP) against Marvel Sigma Homes Private Limited, is hereby dismissed as not maintainable.

43. Ordered accordingly.

Sd/-

Prabhat Kumar

Member (Technical)

Vijay Andhale

Sd/-

Sushil Mahadeorao Kochey

Member (Judicial)